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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

WAUSAU UNDERWRITERS  
INSURANCE COMPANY et al.,

Petitioners,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

ATLANTIC MUTUAL INSURANCE  
COMPANY et al.

Real Parties in Interest.

E049323

(Super.Ct.No. RCV096344)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Keith D. Davis,  
Judge. Petition granted in part; denied in part.

Kring & Chung, Ronald J. Skocypec and J. Christopher Bennington for Petitioner  
Wausau Underwriters Insurance Company.

No appearance for Respondent.

Selvin Wraith Halman, Gary R. Selvin and Mark E. Inbody for Real Party in Interest Atlantic Mutual Insurance Company.

## INTRODUCTION

In this matter, we have reviewed the petition, the opposition filed by real party in interest Atlantic Mutual Insurance Company (Atlantic), and petitioner Wausau Underwriters Insurance Company's (Wausau) reply. We have determined that resolution of the matter involves the application of settled principles of law and that issuance of a peremptory writ of mandate is appropriate to secure limited relief to petitioners. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

## DISCUSSION

We have concluded that the only relief that is necessary and appropriate at this point is an order directing the Superior Court of San Bernardino County to vacate its order fixing sums due by petitioner Wausau and, implicitly at least, authorizing enforcement by real party in interest Atlantic. The issue has not been bifurcated and there is no enforceable (or appealable) judgment at this time.

*American Motorists Ins. Co. v. Superior Court* (1998) 68 Cal.App.4th 864 is not to the contrary. In that case, after the insurer appealed, the court *construed the lower court's order* "to include an implied order 'sever[ing] the duty to defend from the remaining issues and enter[ing] a final judgment (order) on that collateral issue.'" (*Id.* at p. 869.) In this case, we decline to so construe the order of summary adjudication (and we express no opinion on the question of whether this limited issue *could* properly be severed); the order is what it is, which is an interim, nonappealable, nonenforceable

order. Atlantic also cites *Watts Industries, Inc. v. Zurich American Ins. Co.* (2004) 121 Cal.App.4th 1029, which does not discuss the *propriety* of the payment order, and it is axiomatic that cases are not authority for issues not considered. (See, e.g. *In re Chavez* (2003) 30 Cal.4th 643.)

#### DISPOSITION

Accordingly, the petition for writ of mandate is granted in part. Let a peremptory writ of mandate issue, directing the Superior Court of San Bernardino County to vacate that portion of its order purporting to fix sums due by Wausau to Atlantic as its contribution of defense costs. In all other respects, the petition is denied.

In the interests of justice, the parties shall bear their own costs.

Petitioner Wausau is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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KING  
J.

We concur:

RAMIREZ  
P. J.

RICHLI  
J.